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LEGITIMATE LIMITS OF COUNSEL

Board of Examiners, says: In nine cases out of every ten the first step on the criminal highway is taken by the *truant*. Mr. Pillsbury says also: In very self-defense children must be kept in school. There will be no diminution of criminality until this is accomplished.

“These startling statements, which are corroborated by the best authorities, demonstrate clearly that truancy is not only an educational problem, but a great social and economic problem as well. It logically follows then that money spent in correcting the truancy habit is a good investment. The special schools for truants have saved the state of California thousands of dollars during the seven years of their existence. Their work has been still more valuable and far reaching in that they have saved hundreds of boys from careers of criminality and started them well on the road to upright living and good citizenship.

“Boys are kept in these schools for periods of varying length, ranging from a few days to several months. More than 95 per cent make good after their stay in the special schools. This result is rather remarkable when the fact is considered that no boy who has been excluded from the regular schools for any cause, has been refused admission to the special schools. The troublesome, disagreeable, disorderly boy is a most valuable asset and the school must not refuse him a place just because his independent nature refuses to conform to arbitrary standards that even experts cannot accept.

“The special schools have demonstrated the fact that truants will attend school when school conditions are natural and the boy is not compelled to adjust himself to an environment artificial in its nature and detrimental to the individual growth and development of the independent boy. As a direct result of these schools expulsions have disappeared from the Los Angeles schools, suspensions are reduced to a minimum, and the so-called bad boy has practically ceased to be a problem there.”

The subject matter of the above extract is a sufficient argument for the parental school as an agent of preventive criminology.

ROBERT H. GAULT.

LEGITIMATE LIMITS OF COUNSEL IN SUMMING UP.

The public knew that some lawyers were morally rotten. But the public was not aware that lawyers openly declared their rottenness and justified it, or revealed their rottenness and thought it purity.

The profession of law is confronting a perilous time. It is iniquitous. It is getting more and more so. Corruption is not only in the

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heart of the obscure, but in the cockles of the heart of the prominent. This is not the first time an editor of this Journal has called out in clarion tones to the profession to be on its guard, to clean itself out, to get rid of its unworthy members. Nothing short of riddance will do any good. No amount of denunciation will pierce the thick hide of the callous wrongdoer. The medicine indicated is an emetic. The problem has become important for us. The proper solution of it has become necessary to our very existence. I am no alarmist. But history is history, and we had better take heed of it. We must clean ourselves out, or the people will do it for us. No one can tell where hot passion will end. If we allow our sacred garments to be touched by profane hands, Lord pity not only our garments but our very selves. It will serve us right; we shall deserve no better of the community we shall have betrayed.

In New York City the police force has undergone a thorough overhauling. Trial after trial of members of the force has been had, and convictions obtained. First it was the Lieutenant who aided and abetted the murder of a gambler. Then it was the gangsters who had committed the murder; then the policemen who had been concerned in taking money from keepers of disorderly houses; and finally the Inspectors, the highest uniformed officers of the force. All these have been convicted. But my business at present is not a history of these prosecutions. It is, rather, a discussion of a statement made by one of the counsel for the defense on the trial of the four Inspectors for conspiracy to keep out of the jurisdiction a witness who would give damaging evidence against them.

The statement was made on summing up. Captain Blank had turned state's evidence against the Inspectors. He had told how one of these Inspectors had known of the giving of money to the witness who was to be kept out of the state. It was the contention of counsel for the Inspector concerned that the latter became privy to the fact that the witness was being kept out by money contributed by members of the police force, only after the money had passed. "Now," said the distinguished counsel, "He could have done what he did—kept silent about it, or he could have come to the District Attorney and told him about it. Captain Blank, who has turned state's evidence, has become a stench in the nostrils of this community. He deserves ostracism. To have betrayed his colleagues is a dastardly thing to have done. He is mean and low, and no one should associate with him. His turning against his comrades makes him by that very fact unworthy of the society of men. Should my client, Inspector Blink, have done as Captain Blank did? Should he have come to the District Attorney and said to him that a crime had been committed by his brother officers? The town would have been stifled

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with the stench of this action. It would have branded him as an outcast. No one could or should have stomached him. He did what any of us would have done; he did what any lawyer would do for a brother lawyer; he did what any clubman would do for a fellow clubman. He did what any of you, gentlemen of the jury, would have done in similar circumstances. He kept still. He was silent. He didn't come to the District Attorney and squeal, and thereby stink all over town."

I have not given the exact words of this distinguished member of the Bar. The ill-smelling words are his; the fragrant ones are mine. I vouch, though, for the correctness of the substance. I must premise that the statement did not enter into the merits of the case anyway. If the gentleman thought it did he was in error. The guilt or innocence of the client did not depend upon the rightness or wrongness of the proposition laid down. It was all mere obiter. The blunder was by so much the more reprehensible. This gentleman said in the course of his speech to the jury that he had been in practise for twenty-five years. He does occupy an enviable position at our Bar. He is, in addition, the author of two insignificant books treating of the art of cross-examination and trial practise, in a popular way. Though the books are worthless, though they contain nothing that is not better expressed in any number of works I might mention, though they include much fat and little meat, they are somewhat used. And in spite of the fact that they inculcate expressly and by implication the idea that a trial is a game, and that all sorts of tricks are allowable, and not at all that it is a stern, solemn proceeding for the ascertainment of truth, they have acquired a certain sort of popularity. He is a man who is looked up to, especially by the younger generation. I saw present at the trial young men just out of school, and some still raw and callow in the practise of law. To these there is responsibility. To these, as well as to others, men like this distinguished counsel must talk. What are such members of our profession going to think about it? What are they going to do about it when they hear declared in open court by a person who is prominent and mighty in the profession that to break the law of morals is a sacred duty not only of a lawyer, but of a clubman, of a policeman, of a juryman, of all of us? What is the public who listens in wondering astonishment to this oracle to think of us lawyers when such a model speaks in our name, proclaiming that he who reveals to the lawfully constituted authorities that a crime has been committed is an outlaw and an outcast? Is it right? Is it fair? Is it just that we should be dishonored and debased in that way? Is it right that a distinguished lawyer in a foolish attempt to save a client from conviction of a misdemeanor should drag into the nether-

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most depths of Hell unexperienced young men who believe in him ; should disgrace a profession that is not yet, thanks be given, permeated with putrefaction, and should hold up to the community an ideal that is against morality ?

Loyalty to lawbreakers, then, is a virtue. We have come to that. *L'Omertà* is not dead. It does not live only among barbarous peoples ; it is rife among the most civilized of men. The issue is clear. Nothing can befuddle it. If I know that a crime has been committed, I am to be lauded if I remain silent. Indeed, it is my business to remain silent. If, on the contrary, I do what I can to help the lawfully constituted authorities to run down the lawbreaker, and assist in his prosecution and conviction, I am to be reprobated. I am to be shut out from my fellow men. I am no longer fit to live among them. I have proved traitor to the community.

Mark, that even as general propositions these statements would be monstrous. Proceedings indicated by the propositions may be excusable, or even necessary, in a peculiar state of society as among the Neapolitans under the rule of the Bourbons, because in that case the Bourbons were considered foreigners, invaders and usurpers, and the indigenes stuck together and pulled together in all things, in lawful and in unlawful things. But the propositions are applied to New York City. If I denounce a fellow lawyer because of his crime, am I thereby debarred from the enjoyment of the society of my honest brothers ? If I denounce him, am I thereby *ipso facto* a traitor to my profession, and—oh ! marvel of marvels—a traitor to law and order and the community ? Is there among us a state of war ? Are groups and cliques and classes, social, economic, political, and what not, entities separate from the whole ? Are they all for themselves and nothing for the commonweal ?

Right is right, and wrong is wrong. No one, not even a distinguished lawyer, can jumble matters so that two and two will make five. Two and two make four. The gentleman is far gone if he believes that what he advocates is right. And he is unfit to be at the bar if he is speaking for effect. A young, ardent advocate, fresh from school in the flush and ardor of his first great case might have been excused. We could easily have found reasons—the ecstasy of the moment—the heat of passion, the ambition that o'erleaps itself and falls on the other side. But even here I venture to say that not one youngster in a million would have burnt his lips and seared his heart to the extent of uttering such words. For truth is truth, and conscience is conscience. The moral law is one. It is known of babes and sucklings, as well as of distinguished lawyers.

FUNCTIONS OF THE GRAND JURY

No. The youth could not; he were too good. And he would not, if he could; he were too sensible.

A man struggling to keep his head above water in the seething ocean of life, fighting hard, able to work and willing to work, but finding no opportunity to labor in the vineyard on the shores—if this man plays foul, he may be commisserated. A Ugolino starving for want of bread, and tortured by the sight of his children dropping dead one by one, who crashes into law and morality to preserve his life and those dependent upon him, may be excused. A man oppressed by the weight of sorrow and dented by the unending blows of life who steams into law or morality and opens a wide breach in it may be pardoned. But these are all exceptions, and universally recognized to be such. Even in some of these cases, however, while we pity and exculpate, we deplore.

But there can be no excuse for an ordinary defender to traverse the bounds of counsel's liberties and ram into the most sacred principles of life and order and decency. The verities are eternal. Must we rediscuss and re-establish them? Have we forgotten the most elementary duties? Have our minds become obfuscated by too much light? Has Mammon overpowered us? Do we care more for a paltry victory than for the most fundamental truths of life? Does a distinguished member of the Bar care more for success in a misdemeanor case than the country is watching, than for his own good name, his own clean reputation, the reputation of his brethren, and the good of the commonwealth? Life still means intensely, and it means good. It does not yet mean flabbily, and mean evil. How long are we to stand such procedure? Will the profession endorse the sentiments of this member? Will the public generalize? Will the few people in court who heard the remarks and looked at one another and smiled—will they lump us all together? Will the larger public outside that courtroom look to us for guidance, or will it trample us down as worms? We are serpents slyly working our way into the core of all that is pure, of all that is beautiful and of all that is true. Will the public allow us to continue on our way? Brothers of the bar, awake, arise, or be forever fallen! Let us bestir ourselves to better things, and a better life. Let us do our own house keeping and house cleaning, lest others do it for us. It is just to do it. It is politic. It is expedient. It is honorable. It is safe. It is self-preserved. It is preservative of the good of the state.

ROBERT FERRARI.

FUNCTIONS OF THE GRAND JURY.

In recent years it has frequently been proposed to do away with the grand jury and in many of the states crimes are now more fre-